

RESOLUTION

Township of West Orange

Planning Board

PB 22-11 Montclair Golf Club/25 Prospect Street

Block: 151 Lots: 1, 5, 7, 11, 14, 15.01, 23, 34, 37, 41, 45.01 and 49; Zone: R-2

Decided on November 2, 2022, 2022

Memorialized on December 7, 2022

C (2) Variances and Preliminary and Final Site Plan Approval

WHEREAS, Montclair Golf Club (Hereinafter the “Applicant”) has made an application for a c (2) Variance and Preliminary and Final Site Plan approval in order to expand an existing irrigation pond and construct a new pump house at property located at 25 Prospect Street, also known as Block: 151 Lots: 1, 5, 7, 11, 14, 15.01, 23, 34, 37, 41, 45.01 and 49, in the R-2 Zone; and

WHEREAS, a properly noticed public hearing was conducted on November 2, 2022; and

WHEREAS, the Applicant was represented by Robert A. Gaccione, Esq. of the firm Gaccione Pomaco, P.C.; and

WHEREAS, the Applicant provided testimony by Roger Bacon, General Manager of Montclair Golf Club; and

WHEREAS, the Applicant provided testimony by Timothy Derrick, of Langan Engineering and Environmental Services, Inc., a licensed Civil Engineer in the State of New Jersey whose credentials were accepted by the Board; and

WHEREAS, the Applicant provided testimony by Rachel Fifield, of Langan Engineering and Environmental Services, Inc., a licensed Planner in the State of New Jersey whose credentials were accepted by the Board; and

WHEREAS, the Applicant submitted the following documents to the Board in the form of the application package:

ITEM	SIGNED BY	DATE/REVISION
Site Plans (7 sheets)	Michael Fowler, P.E.	9/8/2022
Architectural Plans (1 sheet)	Joseph L. Haines, AIA, PP	9/8/2022

WHEREAS, representatives of the public asked questions of the witnesses and had an opportunity to offer statements in regard to the application; and

WHEREAS, the Board reviewed and considered the application, testimony and documents submitted therewith; and

WHEREAS, the Board also considered the input of its professionals at the hearing; and

NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at its public hearing, at which a record was made:

1. The Applicant is requesting preliminary and final site plan approval with variance relief to expand an irrigation pond in the southwestern portion of the property, which would also include the construction of a new pumphouse and related improvements. An existing water tank and pumphouse located on another portion of the golf course are proposed to be removed.
2. The proposed construction is located in an area within the existing golf course.

3. The property is located on Prospect Street and the surrounding area consists of residences on Seaman Road, and other single-family homes, as well as the Residence Inn Hotel and The Manor catering facility to the southeast.
4. The current method of irrigating the golf course is obsolete and an irrigation system for a golf course is vital to its business. The current method of irrigation is by an existing reservoir that is 20 years old and has a 1-million-gallon water capacity and a water tank that is even older. The proposed changes include removing the existing water tank and enlarging the pond reservoir to hold over 3 million gallons of water. The irrigation system would be operated by pump mechanisms and pipes contained within the proposed new pump house.
5. The proposed pump house will contain the workings of the pump and the height proposed is for two reasons, first for the height clearance necessary for the workings of the pumping/irrigation system and also that the design that includes a gable roof to fit in with the residential aesthetic.
6. The application requires the following bulk variance relief from the Board:

Section	Required	Existing	Proposed
25-8.1.f Maximum accessory building height	1 ½ stories/ 15 feet	N/A	17.2 feet

7. N.J.S.A. 40:55D-46a. and b. and N.J.S.A. 40:55D-50a. govern the Board’s review of the preliminary and final site plan application. N.J.S.A. 40:55D-46a provides that an “ordinance requiring site plan review and approval shall require the developer submit to the administrative officer a site plan and such other information as is reasonably

necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met.” N.J.S.A. 40:55D-46a further provides that “The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient.” N.J.S.A. 50:55D-46b provides that “if the planning board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development” and “the planning board shall, if the proposed development complies with the ordinance and this act, grant preliminary site plan approval.” N.J.S.A. 40:55D-50a. provides that final site plan approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such if the applicant meets the standards set forth in the ordinances, the planning board lacks the authority to deny approval of the site plan and subdivision. N.J.S.A. 40:55D-50a; PRB Enters., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987); Dunkin' Donuts of N.J., Inc. v. Twp. of N. Brunswick Planning Bd., 193 N.J. Super. 513, 515 (App. Div. 1984).

Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are two exceptions: (1) The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review

the application against all remaining ordinance requirements and grant approval if the application complies with all such remaining requirements.

8. N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d” variance as part of site plan or subdivision review. The variance proofs are the same as for “c” variances as set forth in N.J.S.A. 40:55D-70. A c (2) variance may be granted when the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a “c (2)” variance must include benefits to the community as a whole, not just the applicant or property owner. A “c” variance must address the “negative criteria,” and affirmatively demonstrate that the variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality.

NOW, THEREFORE, based upon the foregoing findings of fact, the Board reaches the following conclusions of law:

1. This application requires the following variance relief, as well as site plan approval:

Section	Required	Existing	Proposed
25-8.1.f Maximum accessory building height	1 ½ stories/ 15 feet	N/A	17.2 feet

2. The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Planning Boards with the power to grant variances from bulk and other Ordinance requirements when the Applicant satisfies certain specific proofs enunciated in the statute.
3. Under the c(2) criteria, the Applicant must demonstrate that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by

allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment.

4. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” variance relief, under Section c (2).
5. Also, an applicant for these variances must show that the proposed relief sought will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The burden of proof is upon the Applicant to establish that these criteria have been met.
6. The proposal is to increase the existing reservoir pond and construct a new pump house that will be 17.2 feet high.
7. As to site plan requested waivers, as there is no new impervious coverage, and the drainage area is not changing, thus the Green infrastructure requirement is not applicable to this project and a waiver is granted.
8. As to design comments and plat details satisfied by the Applicant at the hearing, the Applicant provided testimony as to checklist items #20: that there are no existing or proposed deed restrictions or covenants in the project area, #21: there are no easement or land reserved or dedicated to public use; #14: ownership is established, #46: no solid waste management plan is applicable; and, #22: the project will be done in a single stage.
9. As for the requested bulk variances, they also satisfy a c (2) criteria as Applicant has provided credible evidence that the following purposes of the MLUL set forth in N.J.S.A. 40:55D-2 are advanced. Paragraph i. of the statute is advanced as under paragraph i. the removal of the old tank and construction of the new pump house will promote a desirable visual environment through creative design. The proposed upgrades will advance

paragraph g. of the statute as it will allow the irrigation system to function more efficiently and safely. Paragraph m. of the statute is established by the project as it provides for more efficient use of the land as the new pump house will allow for a quieter method of irrigating the golf course.

10. With respect to the negative criteria under the MLUL, the Board accepts the testimony that there is no detriment to the public good as the proposed pump house is not the tallest structure on the property and is over 300 feet away from a neighboring property. The Board also takes note of the fact that the 15-foot height limit for an accessory structure does not take into account the size of a property, which in this case is 277 acres.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that preliminary and final site plan approval with variance relief for the application of Altera 769, LLC for property located at 25 Prospect Avenue, is determined as follows:

1. The Board grants the following bulk variance relief pursuant to N.J.S.A. 40:55D-70c (2):

Section	Required	Existing	Proposed
25-8.1. f Maximum accessory building height	1 ½ stories/ 15 feet	N/A	17.2 feet

2. Preliminary and final site plan approval is granted along with the c(2) variance approval set forth above.

AND IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction but excluding interior renovations, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.
2. If another governmental entity or agency grants a waiver or a variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.
3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.

5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of the notification or this approval shall be deemed withdrawn.
6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.
7. If the Township Engineer determines that the renovations to the pond cause an increase in water retention to the Peckman River or other nearby waterways, a storm water retention plan will be required.
8. Applicant agrees to comply with the recommendations and directives set forth in the reports of the Township Engineer, specifically items numbers 23, 52, 28, 31, 33, 34, 35, 36, 37, 44, 45, sustainability checklist and correct the site plan to reflect that the application is for Preliminary and Final Site Plan approval (And not an amended site plan application) as per the report of John Hess, PE, PP, CME dated October 19, 2022 and the testimony at the hearing.
9. Applicant shall list all conditions of approval onto a final site plan submission.

The undersigned secretary certifies the decision set forth herein was made by this Board on November 2, 2022, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on

_____.

Jamilet Baquerizo, Planning Board

Secretary

Vote Action Taken by the Board on November 2, 2022:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino			X			
L. Klein			---			
S. McCartney			X			
J. McNair			X			
C. Morgan		X	X			
P. Smeraldo			X			
W. Wilkes			---			
S. Jensen			X			
J. Cardoza			X			
R. Bagoff	X		X			

Vote on Memorialization on December 7, 2022:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper						
J. Guarino						
L. Klein						
S. McCartney						
J. McNair						
C. Morgan						
P. Smeraldo						
W. Wilkes						
S. Jensen						
J. Cardoza						
R. Bagoff						